



**US Army Corps
of Engineers®**
Walla Walla District

JUL - 7 2011



**MEMORANDUM OF AGREEMENT BETWEEN
U.S. ARMY CORPS OF ENGINEERS, WALLA WALLA DISTRICT;
NATURAL RESOURCES CONSERVATION SERVICE-IDAHO AND U.S.
ENVIRONMENTAL PROTECTION AGENCY, REGION 10 FOR CWA § 404
ENFORCEMENT IN IDAHO**

I. Purpose and Scope

This document outlines a process for effective communication and coordination between the U.S. Army Corps of Engineers Walla Walla District (Corps), the Natural Resource Conservation Service – Idaho (NRCS), and the U.S. Environmental Protection Agency, Region 10 (EPA) during Clean Water Act Section 404 (CWA § 404) enforcement activities. The scope of this MOA is limited to establishing a process for agency interaction during CWA § 404 enforcement activities involving unauthorized discharges of dredged or fill material to waters of the United States. This agreement does not replace or modify the existing Partnership Agreement between the US Department of Agriculture (NRCS) and the US Department of the Army (ASA-Civil Works) dated May 26, 2011.

II. Agency Responsibilities and Coordination

This section identifies the coordination responsibilities of each agency regarding any potential or documented CWA § 404 violation(s), as well as incidences of joint CWA § 404 and Wetland Conservation provisions of the Food Security Act of 1985 (Swampbuster).

A. Communication

In the event of a disagreement among the participating agencies regarding any potential or documented CWA § 404 violation(s), the parties should make every effort to resolve issues as quickly as possible by early consultation between Agency Contacts and other appropriate agency representatives. Each signatory agency will provide the other signatory agencies with a point of contact, including name, title, phone number, and email address. The point of contact information should be updated at least the first of every year.

B. Investigating Potential Unauthorized Discharge

1. Where the Corps or the EPA conducts a site inspection and finds a potential CWA § 404 violation warranting further investigation, the investigating agency should notify NRCS via electronic mail as soon as possible.
2. When NRCS learns of a potential CWA § 404 violation, it should immediately cease providing technical assistance associated with the potential violation until verification from the Corps or the EPA that no CWA § 404 violation has occurred.
3. During NRCS site visits, NRCS should obtain a copy of a landowner's CWA § 404 permit, if one exists, when providing technical assistance in waters of the United States and it should advise the landowner to notify the Corps if work may have been done outside the scope of the permit or without a permit.

C. Responding to Documented CWA § 404 Violation

1. NRCS should cease providing technical assistance associated with an alleged CWA § 404 violation upon where a notification of violation or other enforcement order has been issued to the landowner by the Corps or the EPA. NRCS may continue, however, to provide technical assistance with a restoration plan for a § 404 violation when NRCS is simultaneously working with the landowner to resolve a Swampbuster violation in accordance with Section D below.
2. When the EPA or the Corps issues an enforcement order or notification of violation, or otherwise corresponds with landowners regarding a documented CWA § 404 violation, the EPA or the Corps should provide copies of those letter(s) to the other agencies.
3. Once the EPA or the Corps notifies NRCS that a CWA § 404 violation has been resolved, NRCS may provide technical assistance to the landowner as it relates to the underlying violation.

D. Coordination Where Joint Swampbuster/CWA § 404 Violation

1. The Corps, NRCS, and the EPA should strive to work together when the EPA or the Corps is enforcing a CWA § 404 violation concurrently with NRCS enforcement of Swampbuster. Written permission from the landowner is required for NRCS to release information from the landowner's case file to

the other agencies. The federal agencies' goal is to seek, when possible, a joint resolution of the alleged violation.

2. Joint resolution occurs if NRCS accepts a Corps authorization as mitigation for a Swampbuster violation or if the EPA and/or the Corps notify NRCS in writing that an NRCS mitigation plan is sufficient to resolve a CWA § 404 violation.
3. When a joint resolution cannot be reached by the parties within one calendar year of the commencement of a joint coordination, each agency may independently resolve its respective violations.

E. Applicability of Document


1. This MOA should be reviewed annually to consider modifications or amendments.
2. This MOA may be terminated by any party upon thirty (30) days written notice to the points of contact at the other agencies.
3. All responsibilities described in this MOA are contingent on the availability and allocation of funding by each Agency. As required by the Antideficiency Act, 31 U.S.C. 1341 and 1342, all commitments made by the EPA in this MOA are subject to the availability of appropriated funds. Nothing in this MOA, in and of itself, obligates the EPA to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations that would be inconsistent with Agency budget priorities. Any transaction involving reimbursement or contribution of funds between the parties to this MOA will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.
4. This MOA recognizes that each agency acts in its independent capacity and therefore no agency is considered to be the officer, agent or employee of the other coordinating agencies.
5. This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against the Corps, NRCS or the EPA, their officers or employees, or any other person. This MOA does not direct or apply to any person outside of the Corps, NRCS, and the EPA.
6. This MOA is effective upon the date it is signed by the last agency.

U.S. ENVIRONMENTAL PROTECTION AGENCY

BY:  Date: 7/7/11

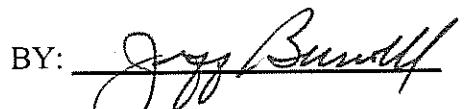
DENNIS J. MCLERRAN
REGIONAL ADMINISTRATOR, REGION 10

DEPARTMENT OF THE ARMY

By:  Date: 18 Feb 11

DAVID A. CALDWELL, LTC
DISTRICT ENGINEER, WALLA WALLA DISTRICT

NATURAL RESOURCES CONSERVATION SERVICE

BY:  Date: 7/20/11

JEFF BURWELL
STATE CONSERVATIONIST